

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2228 OF 2016

Sudam s/o. Sopanrao Chikhalikar,
Age 59 years, Occ. Agri.,
R/o. Maniknagar, Parli-V,
Tq. Parali-V, Dist. Beed.

..Petitioner

versus

1] The State of Maharashtra,
Through Law and Judiciary
Department, Mantralaya,
Mumbai

2] The Principal Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai

3] The Accountant General,
Through its Account Officer,
Pay Verification Unit
Department, Aurangabad

4] The Civil Judge, Junior Division,
Parali-V, Tq.Parali-V,
Dist. Beed

..Respondents

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Mr.A.V.Rakh, Advocate for petitioner

Mr.V.S.Badakh, AGP for respondent nos.1 to 2

Mr.N.B.Suryawanshi, Advocate for respondent no.4

Respondent no.3 - served

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**CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.
RESERVED ON : APRIL 27, 2016
PRONOUNCED ON : MAY 05, 2016**

JUDGMENT (Per Sangitrao S. Patil, J) :

Heard.

2] Rule. Rule made returnable forthwith. By consent of the parties, Writ Petition is heard finally.

3] The petitioner, who retired on 30.11.2014 as Assistant Superintendent, attached to the Court of Civil Judge, Junior Division, at Parali-Vaijnath, Dist. Beed, has challenged the revised pay fixation order dated 04.07.2015 passed by respondent no.4, i.e. Civil Judge, Junior Division, Parli-Vaijnath, Dist. Beed, showing excess payment of pay and allowances to the tune of Rs.4,20,416/- to the petitioner and the notice dated 29.09.2015 issued at the instance of

respondent no.4 calling upon him to show cause as to why the said amount should not be recovered from the pensionary benefits of the petitioner. He further claimed the benefit of the recommendations of Justice Shetty Commission since, according to him, his post is covered in Clause 3 of the chart given under the caption 'Increase in Pay Scale' of the resolution dated 20.10.2011 passed by the Government of Maharashtra, Law and Judiciary Department, Mantralaya, Mumbai.

4] The learned Counsel appearing for the petitioner submits that as per the impugned order dated 04.07.2015 passed by respondent no.4 in pursuance of the communication dated 23.02.2015 received from respondent no.3, the amount of Rs.4,20,416/- has been shown to have been paid in excess to the petitioner during the period from October, 2005 to November, 2014 and has been sought to be recovered from the pensionary

benefits of the petitioner. He submits that the petitioner retired from service on 30.11.2014. He was a Class-III employee. Therefore, in view of the judgment in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others, (2015)4 SCC 334**, the said amount was not liable to be recovered from the petitioner. He further submits that the petitioner was promoted to the post of Assistant Superintendent on 01.07.2008 and worked as such till 30.11.2014, when he retired on attaining the age of superannuation. He was never demoted from that post. Prior to his retirement, the Service Book of the petitioner was sent for verification of pay to respondent no.3 – Accounts Officer, Pay Verification Unit, Aurangabad. Accordingly, respondent no.3 fixed his pay on 16.12.2013 and entry thereof was taken in the Service Book of the petitioner. According to him, it was correct pay fixation as per the recommendations of Justice Shetty Commission. The

learned Counsel, therefore, submits that the Office Order dated 04.07.2015 issued by respondent no.4 may be set aside and the pay fixed by respondent no.3 – Accounts Officer, Pay Verification Unit, Aurangabad as per order dated 16.12.2013 may be confirmed. He further prays that the order directing recovery of Rs.4,20,416/- from the pensionary benefits of the petitioner may be set aside.

5] One Ganpat s/o. Venkatrao Jadhav, Accounts Officer, Pay Verification Unit, Aurangabad filed affidavit-in-reply on behalf of respondent no.3 and opposed the claims of the petitioner. The learned AGP submits that the circular dated 08.03.2013 issued by the Government of Maharashtra, Law and Judiciary Department, Mantralaya, Mumbai is not applicable to the case of the petitioner since, as per Clause 4 thereof, the petitioner is not entitled to get benefits of

the recommendations of Justice Shetty Commission. He supports the impugned order dated 04.07.2015, show cause notice dated 29.09.2015 and prays that the petition may be dismissed.

6] So far as the controversy in respect of recovery of Rs.4,20,416/- from the petitioner on account of excess payment is concerned, the learned Counsel appearing for the petitioner referred to paragraph 18 of the judgment in the case of **State of Punjab and others** (supra) wherein, the Hon'ble the Supreme Court has summarised some of the situations when recovery by the employer would be impermissible in law. They are as under :-

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due

to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

7] Indisputedly, the petitioner was a Class-III employee and the impugned order dated 04.07.2015

showing excess payment has been passed after retirement of the petitioner. Therefore, the case of the petitioner would be squarely covered under Clauses (i) and (ii) referred to above. In that view of the matter, the impugned action proposed to be taken against the petitioner for recovery of Rs.4,20,416/- on account of excess payment being impermissible, is liable to be nullified.

8] The learned counsel for the petitioner cited the judgment in the case of **Amanulla Khan s/o. Amir Khan Pathan Vs. State of Maharashtra and ors., 2016(1) Mh.L.J. 723**, wherein, it has been observed that the benefits of the recommendations of Justice Sheety Commission are liable to be given to the Assistant Superintendents irrespective of the fact, whether the persons holding such posts are attached to the Court of Civil Judge, Junior Division or that of the Senior Civil Judge. In view of this judgment, the

petitioner is entitled to claim benefits as recommended by Justice Shetty Commission.

9] In the above circumstances, the present Writ Petition succeeds. We, therefore, set aside the revised pay fixation order dated 04.07.2015 passed by respondent no.4 showing excess payment of Rs.4,20,416/- from the petitioner as also the show cause notice dated 29.09.2015 for recovery of the said amount from his pensionary benefits. We direct respondent no.4 to refix the pay of the petitioner in tune with the order dated 16.12.2013 and send the proposal for pension of the petitioner to respondent no.3, at the earliest.

10] With these directions, the Rule is made absolute. The Writ Petition stands disposed of accordingly. No costs.

[SANGITRAO S. PATIL, J.]

[S.S. SHINDE, J.]

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